

# State of South Dakota

## NINETIETH SESSION LEGISLATIVE ASSEMBLY, 2015

850W0300

### HOUSE BILL NO. 1128

Introduced by: Representatives Hickey, Bolin, Gosch, Haugaard, Heinemann (Leslie), Hunt, Johns, Killer, Kirschman, Latterell, Peterson (Kent), and Soli and Senators Rusch, Haggar (Jenna), Hunhoff (Bernie), and Sutton

1 FOR AN ACT ENTITLED, An Act to protect certain homestead exemption interests during sale  
2 of homestead or separation of owners.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-31-1 be amended to read as follows:

5 43-31-1. The homestead, including a homestead listed for sale, of every family, resident in  
6 this state, ~~as hereinafter defined~~, so long as it continues to possess the character of a homestead  
7 is exempt from judicial sale, from judgment lien, and from all mesne or final process from any  
8 court, to the extent and as provided by statute. However, a creditor or lien holder of a mobile  
9 home classified as a homestead under § 43-31-2 prior to January 1, 1973, may not be cut off and  
10 is not subject to a homestead exemption. In addition, a homestead with a value of less than one  
11 hundred seventy thousand dollars of a person seventy years of age or older, and the unremarried  
12 surviving spouse of such person, is exempt from sale for taxes for so long as it continues to  
13 possess the character of a homestead.

14 Section 2. That § 43-31-2 be amended to read as follows:



43-31-2. The homestead ~~must embrace~~ embraces the house used as a home by the owner ~~thereof of it~~, being either, real property or a mobile home ~~as hereinafter defined~~, and if ~~he or she~~ the owner has two or more houses or mobile homes thus used at different times and places, ~~such~~ the owner may shall select which he or she will retain as a homestead.

~~It must~~ The homestead may not embrace more than one dwelling house or any other buildings except such as are properly appurtenant to the homestead ~~as such, but a~~. A shop, store, or other building situated on real property and really used or occupied by the owner in the prosecution of ~~his~~ the owner's own ordinary business may be deemed appurtenant to ~~such the~~ owner's homestead.

~~Mobile homes shall~~ A mobile home may include any vehicle without motive power which can provide adequate, comfortable, all season quarters for the purpose of making it a residence ~~thereof~~ and which vehicle is larger than two hundred forty square feet, measuring at the base ~~thereof. Such~~ of the vehicle. The mobile home must be registered in South Dakota at least six months prior to the claim of exemption.

Section 3. That chapter 43-31 be amended by adding thereto a NEW SECTION to read as follows:

If an owner is required to leave a homestead pursuant to a protection order obtained by the owner's spouse or to otherwise preserve peace in the home, the owner's absence from the homestead may not be considered a waiver or abandonment of the owner's interest in the homestead, unless there is evidence to the contrary. If the court orders the division of the homestead pursuant to § 25-4-42, the owner's absence from the homestead, unless there is evidence to the contrary, may not be considered a forfeiture of the homestead exemption, and any proceeds secured by the judicial lien are exempt for a period of one year from the date of receipt of the proceeds.